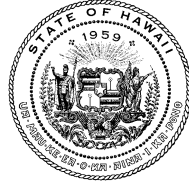


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To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Lisa Kitagawa, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Isaac W. Choy, Director
Department of Taxation

Date: March 16, 2021
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 320, Relating to Tax Return Preparers

The Department of Taxation (Department) supports S.B. 320. This measure adds a new section to chapter 231, Hawaii Revised Statutes (HRS), requiring tax return preparers to have a valid Preparer Tax Identification Number (PTIN) issued by the Internal Revenue Service to prepare any return or claim for refund for compensation and to disclose the PTIN where the Department requires the preparer to do so.

S.B. 320 also establishes administrative penalties for violations and authorizes the Department to bring a civil action against violators in certain circumstances. The measure is effective upon approval, but the imposition of penalties for violations begin on January 1, 2022.

The Department notes that many tax return preparers in Hawaii operate with little State oversight or accountability. Requiring all tax return preparers to have a PTIN will help taxpayers and the Department to ensure that tax return preparers are accountable for the returns they prepare.

Taxpayers will have greater assurance that they can rely on the services of their preparers and the Department will be able to better monitor tax return preparers and detect noncompliance. The provisions relating to penalties and injunctive relief will give the Department more tools to protect taxpayers from harm, ensure fair and accurate tax administration, and prevent malfeasance by bad actors and unintended losses in revenue.

The Department believes that the public will greatly benefit from this improved accountability. Accordingly, the Department supports this measure and can implement it as currently written.

Thank you for the opportunity to testify in support of this measure.

TAX FOUNDATION OF HAWAII

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SUBJECT: ADMINISTRATION, Require PTIN Use by Paid Preparers

BILL NUMBER: SB 320

INTRODUCED BY: KEOHOKALOLE

EXECUTIVE SUMMARY: Requires each tax return preparer to have a valid preparer tax identification number issued by the Internal Revenue Service and to furnish the preparer's tax identification number on any return or claim for refund if required by DOTAX. Establishes penalties for failure to comply. Provides that tax return preparers shall not be liable for penalties prior to January 1, 2022.

SYNOPSIS: Adds a new section to chapter 231, HRS. Provides that a tax return preparer shall have a valid PTIN issued by the Internal Revenue Service, and that the PTIN shall be entered on any tax return prepared for compensation whenever DOTAX requires disclosure of the number on that return.

EFFECTIVE DATE: Upon approval.

The Preparer Tax Identification Number (PTIN) is an identification number that all paid tax return preparers must use on U.S. federal tax returns or claims for refund submitted to the Internal Revenue Service (IRS). Anyone who, for compensation, prepares all or substantially all of any federal tax return or claim for refund must obtain a PTIN issued by the IRS.

The PTIN was created in 1999 to protect the privacy of tax return preparers. Preparers used to be required to sign the tax forms they prepared and provide their Social Security Numbers. Starting with the 2000 tax season, the IRS gave preparers the option of using either their SSNs or PTINs. Between August 1999 and August 2010, the IRS issued more than 1 million PTINs.

The PTIN, however, is not a license or a professional credential. On January 18, 2013, in a decision in *Loving v. Internal Revenue Service*, Judge James E. Boasberg of the U.S. District Court for the District of Columbia ruled that the Internal Revenue Service lacked the statutory authority to regulate tax return preparers. On February 1, 2013, the Court issued an additional order clarifying that the IRS is “not required to suspend its PTIN program,” but that “no tax-return preparer may be required to pay testing or continuing-education fees or to complete any testing or continuing education.” In 2014, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the judgment of the district court. *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

Five years later, the D.C. Circuit upheld the authority of the IRS to charge a user fee to tax return preparers, not because the IRS had authority to regulate tax return preparers, but because it was entitled under another federal statute to recover its direct costs because practitioners received a benefit from using a PTIN (they did not have to disclose their personal social security numbers).

Montrois v. United States, 916 F.3d 1056 (D.C. Cir. 2019). There, the court noted that the Internal Revenue Code “establishes no professional constraints on who may act as a tax-return preparer, with the result that preparers range from uncredentialed persons to attorneys and certified public accountants.”

Given that the PTIN is just a registration number and that it can be issued to anyone who wants one, it may be a mistake to think that those with PTINs are smarter or more reliable than others, and it may be a mistake to give the public the impression that they are.

Digested 1/30/2021